@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 506 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHBHAI MANABHAI PARMAR

Appearance:

1. Criminal Appeal No. 506 of 1992

MR IM PANDYA, APP, for Appellant-State

MR JT TRIVEDI for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 06/12/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973, is directed against

judgment dated February 29, 1992 rendered by the learned 4th Joint Judicial Magistrate, First Class, Godhra, in Criminal Case No.3346 of 1989, by which the respondent is acquitted of the offence punishable under Section 498-A of the Indian Penal Code.

2. Prabhudas Punjabhai is resident of village Moti-Sarsan, District : Panchmahals. Name of his mother is Paniben. Name of one of his sisters was Lilaben. Eight years prior to the date of incident, which took place on July 24, 1988, Lilaben was married to the respondent. The respondent, at the relevant time, was serving as constable and residing in one of the Police Quarters allotted to him at Ghodeshwar. The prosecution case is that Lilaben could not beget a child and, therefore, the respondent was taunting her as barren and meting out cruelty to her. It is also the case of the prosecution that the respondent had an affair with sister of one constable, who was serving at Ghodeshwar, and was subjecting Lilaben to physical and mental cruelty. The prosecution case is that because of harassment meted out to her, Lilaben committed suicide on July 24, 1988 between 15.30 to 17.30 hours by hanging herself on the Beam supporting roof of the house in which the respondent was residing. From the record of the case it is not clear as to who had informed the police about the incident of suicide committed by the deceased. However, from the testimony of Mr.D.M.Rangnekar, who was Sub-Divisional Police Officer, Godhra, it is evident that initially the incident relating to suicide committed by Lilaben was investigated by one officer named Mr.Patel and as this was a serious case, Mr.Rangnekar being superior officer was required to visit the scene of offence. Accordingly, Mr.Rangnekar had visited the scene of offence and prepared panchnama of place of incident. He had also recorded statements of mother as well as three brothers of the deceased. He had made arrangement for sending dead body of the deceased to hospital for post-mortem examination. On conclusion of investigation, the respondent was chargesheeted in the Court of learned Judicial Magistrate, First Class, Godhra for alleged commission of offence punishable under Section 498-A of the Indian Penal Code.

3. Necessary charge against the respondent was framed by the learned Magistrate at Exh.3. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Prabhudas Punjabhai as PW.1 at Exh.15, (2) Paniben Punjabhai as PW.2 at Exh.18, (3) Dr.Shaliniben P.Khanna as PW.3 at Exh.20, (4) Dinkarbhai

M.Rangnekar as PW.4 at Exh.21, (5) Laxmanbhai Punjabhai as PW.5 at Exh.23, and (6) Jyotindra A.Upadhyay as PW.6 at Exh.24, to prove its case against the respondent. The prosecution also produced documentary evidence such as inquest report at Exh.6, panchnama of place of incident at Exh.8, panchnama indicating seizure of clothes of the deceased at Exh.9, post-mortem notes of the deceased at Exh.10, complaint lodged by Mr. Rangnekar on behalf of the State of Gujarat against the respondent at Exh.22 etc. in support of its case against the respondent.

4. After recording of evidence of prosecution witnesses was over, the learned Magistrate explained to the respondent the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure. In his further statement, case of the respondent was that he was falsely implicated in the case. However, no defence evidence was adduced by the respondent.

5. On appreciation of evidence, the learned Magistrate has disbelieved the prosecution case and acquitted the respondent by judgment dated February 29, 1992, giving rise to instant appeal.

6. This Court has heard Mr.I.M.Pandya, learned A.P.P. as well as Mr.J.T.Trivedi, learned counsel of the respondent at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. After analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court finds that there are two glaring defects in the prosecution case against the respondent. The first is that none of the relatives of the deceased filed complaint either before police or before Court against the respondent stating that the deceased was subjected to cruelty by the respondent. The testimony of Mr.Rangnekar does not disclose as to who had given complaint about the suicide committed by the deceased and on what basis Mr.Patel had started investigation under Section 174 of the Code of Criminal Procedure, 1973. His testimony does not explain that why any of the relatives of the deceased had not come-forward to lodge complaint and why it had become necessary for him to lodge complaint against the respondent for alleged commission of offence punishable under Section 498-A of the Indian Penal Code. In the

light of these evident defects, the evidence adduced by the prosecution will have to be evaluated. The first limb of prosecution case that the deceased was subjected to cruelty, as she could not beget a child, is rightly disbelieved by the learned Magistrate. Prabhudas Punjabhai, who is brother of the deceased, claimed before the Court that he was informed by the deceased about cruelty meted out to her by the respondent when the deceased was visiting his house. However, he has clearly stated that he had not informed his mother about the fact that his sister was being subjected to cruelty by the respondent. This is not natural at all and does not inspire confidence of the Court. It is also claimed by this witness that the deceased was also being subjected to cruelty, as the respondent had an affair with sister of another constable who was working with him and that his sister had shown to him a photograph of the constable who was working with the respondent and his sister i.e. the lady with whom the respondent was allegedly carrying affair. However, no photograph could be produced before the Court nor Mr.Rangnekar or for that matter Mr.Patel, who had initially investigated the case, had recorded statement of constable who was working with the respondent, or statement of sister of that constable. Witness Prabhudas has admitted in his testimony before Court that the respondent had taken the deceased to doctor to cure her problem of infertility. He has also admitted in his testimony that he had visited the house of her sister for about 200 to 300 times, but at that time no complaint was made by the deceased that she was subjected to cruelty by the respondent. He has also admitted that he had not informed any of the relatives about the so-called cruelty being meted out to his sister by the respondent nor lodged any complaint against the respondent. In his cross examination, it is stated by the witness that he had mentioned in his police statement that from hospital Lilaben was taken to the house of her in-laws, after which the respondent had gone to Ahmedabad to attend a party and on inquiry being made, the deceased had informed him that the respondent had an affair with sister of an adivasi constable. However, no such statement is made by the witness before the Court nor has he explained as to why his sister was admitted in the hospital. Thus, scrutiny of evidence of witness Prabhudas does not indicate commission of offence by the respondent which is punishable under Section 498-A I.P.C.

7. So also, testimony of Paniben, i.e. mother of the deceased, is of little assistance to the prosecution. She also maintained before the Court that her daughter was being beaten and was taunted, as she was not able to

beget a child. However, in cross-examination, she pleaded ignorance whether her daughter was being treated by the accused for her problem of infertility or not, which is simply unbelievable in view of admission made by the brother of the deceased that the deceased was being treated for her problem of infertility at the instance of the respondent. If a daughter is being treated for a problem of infertility, first of all, mother is likely to know and thereafter only others are likely to know about the said fact. Thus, testimony of mother of the deceased does not prove case of the prosecution against the respondent. The testimony of Laxmanbhai, who is also brother of the deceased, is of no assistance to the prosecution. He could not say anything against the respondent and, therefore, was not cross-examined by the defence. Two other brothers i.e. Hirabhai and Babubhai, whose statements were recorded by Mr.Rangnekar, have not been examined by the prosecution. Thus, the evidence does not satisfactorily establish commission of offence by the respondent which is punishable under Section 498-A IPC. The view taken by the learned Magistrate cannot be regarded either as perverse or unreasonable so as to call for interference of this Court in instant appeal.

8. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and in the opinion of this Court, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the

view contrary to the one already taken by the learned Magistrate and, therefore, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of direction given by the learned Magistrate in the impugned judgment.

(J.M.Panchal,J.)

(patel)